




DEPARTMENT OF MENTAL HEALTH POLICY/PROCEDURE

SUBJECT: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI) WITHOUT AUTHORIZATION	POLICY NO. 500.2	EFFECTIVE DATE 04/14/03	PAGE 1 of 15
APPROVED BY:  Director	SUPERSEDES	ORIGINAL ISSUE DATE	DISTRIBUTION LEVEL(S) 1

PURPOSE

- 1.1 To outline the appropriate uses and disclosures of Protected Health Information ("PHI") that are allowed without authorization or an opportunity to agree or object in accordance with the Privacy Standards of the Health Insurance Portability and Accountability Act of 1996, 45 CFR Parts 160 and 164 ("the HIPAA Privacy Rule").

POLICY

- 2.1 It is the policy of the Department of Mental Health (DMH) that its uses and disclosures of PHI are in accordance with applicable law. Prior to using or disclosing PHI, DMH must either obtain authorization if so required by the HIPAA Privacy Rule, provide the individual with an opportunity to agree or object or otherwise follow the requirements set forth in this policy. In specified circumstances, as set forth in this policy, DMH may use or disclose PHI without an individual's authorization.

DEFINITIONS

- 3.1 **"Authorization"** means the signed authorization language used by DMH to obtain an individual's permission prior to using or disclosing that individual's PHI for purposes that do not fall within the definitions of treatment, payment or health care operations activities, or are otherwise not allowed by applicable law.
- 3.2 **"Correctional Institution"** means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house, or residential community program center operated by, or under contract to, the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.
- 3.3 **"Disclosure"** means, with respect to PHI, the release, transfer, provision of access to, or divulging in any other manner of PHI outside DMH or to other than its workforce members.
- 3.4 **"Inmate"** means a person incarcerated in or otherwise confined to a correctional institution.



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- 3.5 **“Law Enforcement Official”** means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to (i) investigate or conduct an official inquiry into a potential violation of law; or (ii) prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.
- 3.6 **“Opportunity to Agree or Object”** means individual shall have the opportunity to agree or object to their PHI being used or disclosed for the hospital's facility directory, to third parties involved in their care or payment for such individuals' care, for notification purposes and for disaster relief purposes.
- 3.7 **“Protected Health Information”** (PHI) means information that is (i) created or received by a health care provider, health plan, employer, or health care clearinghouse; (ii) related to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past present or future payment for the provision of health care to an individual; and (iii) identifies the individual (or for which there is reasonable basis for believing that the information can be used to identify the individual).
- 3.8 **“Public Health Authority”** means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.
- 3.9 **“Treatment”** means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, and includes consultations between health care providers relating to a patient or a referral of a patient by one health care provider to another.
- 3.10 **“Use”** means, with respect to PHI, the sharing, employment, application, utilization, examination, or analysis of such information within DMH's internal operations.

PROCEDURE

4.1 Using or Disclosing PHI without Authorization or an Opportunity to Agree or Object

DMH shall obtain the patient's written authorization to provide the individual with the opportunity to agree or object, if so required by law, before using or disclosing the patient's PHI, **unless** the use or disclosure is:



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- 4.1.1 DMH's own treatment, payment, or health care operation;
- 4.1.2 Treatment of another health care provider (even if not covered under the HIPAA Privacy Rule);
- 4.1.3 Payment of another covered entity under the HIPAA Privacy Rule or another health care provider (even if not covered by the HIPAA Privacy Rule);
- 4.1.4 Health care operations of a covered entity, subject to the limitations of 45 CFR. § 164.506(c)(4);
- 4.1.5 Disclosure to the individual about his or her own PHI;
- 4.1.6 Disclosure of a patient's PHI to his or her personal representative;
- 4.1.7 When required by the Secretary of the United States Department of Health and Human Services ("the Secretary") to investigate or determine DMH's compliance with the HIPAA Privacy Rule;
- 4.1.8 By whistleblowers to the U.S. Department of Health and Human Services if to an oversight agency or attorney based on belief of a HIPAA violation;
- 4.1.9 Use or disclosure required by law (refer to Section 5);
- 4.1.10 Use or disclosure for public health activities (refer to Section 6);
- 4.1.11 Disclosure about an individual who is a victim of abuse, neglect or domestic violence (refer to Section 7);
- 4.1.12 Use or disclosure for health oversight activities (refer to Section 8);
- 4.1.13 Disclosure for judicial or administrative proceedings (refer to Section 9);
- 4.1.14 Disclosure for law enforcement purposes (refer to Section 10);
- 4.1.15 Disclosure about decedents to coroners, medical examiners, and funeral directors (refer to Section 11);
- 4.1.16 Use or disclosure for cadaveric organ, eye or tissue donation purposes (refer to Section 12)
- 4.1.17 Use of disclosure for research purposes (refer to Section 13);



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- 4.1.18 Use or disclosure to avert a serious threat to health or safety (refer to Section 14);
- 4.1.19 Disclosure for military activities, national security, intelligence or protective service (refer to Section 15); and
- 4.1.20 Use or disclosure for workers' compensation purposes (refer to Section 16).

Uses and Disclosures Required by Law

- 5.1 DMH may use or disclose PHI to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.
- 5.2 Even if a use or disclosure is required by law, DMH shall comply with the following Sections' requirements, rather than this Section 5, if the disclosure is:
 - 5.2.1 Use and disclosure for public health activities (refer to Section 6);
 - 5.2.2 Disclosure about victims of abuse, neglect or domestic violence (refer to Section 7);
 - 5.2.3 Use and disclosure for health oversight activities (refer to Section 8);
 - 5.2.4 Disclosure for judicial and administrative proceedings (refer to Section 9); or
 - 5.2.5 Disclosure for law enforcement purposes (refer to Section 10).

Use and Disclosure for Public Health Activities¹

- 6.1 DMH may disclose PHI for the following public health activities and purposes described below:
 - 6.1.1 To a public health authority authorized by law to collect and receive such information for the purposes of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, the conduct of public health surveillance, public health interventions, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;
 - 6.1.2 To a public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

¹ To the extent that California law addresses a particular disclosure, California law should be followed. When California law is silent, disclosure may be based on the HIPAA Privacy Rule's provision permitting disclosure of information when specifically authorized by law.



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- 6.1.2.1 DMH workforce members who may detect or otherwise observe instances of child abuse or neglect when acting in their professional capacity or within the scope of their employment shall comply with state law reporting requirements.
- 6.1.3 To a person subject to the jurisdiction of the Food and Drug Administration;
 - 6.1.3.1 To report adverse events (or similar reports with respect to food and dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations, if the disclosure is made to the person required or directed to report such information to the Food and Drug Administration;
 - 6.1.3.2 To track products if the disclosure is made to a person required or directed by the Food and Drug Administration to track the product;
 - 6.1.3.3 To enable product recalls, repairs, or replacement (including locating and notifying individuals who have received products of product recalls, withdrawals, or other problems);
 - 6.1.3.4 To conduct post marketing surveillance to comply with requirements or at the direction of the Food and Drug Administration.
- 6.1.4 To a person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition, if DMH or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; or
- 6.1.5 To an employer, about an individual who is a member of the workforce of the employer, if:
 - 6.1.5.1 The disclosure is made by a covered health care provider who is a member of the workforce of such employer (this will generally apply, in DMH's case, only when DMH itself is the employer that is receiving PHI from one of the workforce members) or who provides health care to the individual at the request of the employer to (1) conduct an evaluation relating to medical surveillance of the workplace, or (2) evaluate whether the individual has a work-related illness or injury;
 - 6.1.5.2 The PHI that is disclosed consists of findings concerning work-related illness or injury or workplace-related medical surveillance;



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6.1.5.3 The employer needs such findings in order to comply with applicable federal or state law, to record such illness or injury or to carry out responsibilities for workplace medical surveillance; and

6.1.5.4 DMH provides written notice to the individual that PHI relating to the medical surveillance of the workplace and work-related illnesses of injuries is disclosed to the employer by giving a copy of the notice to the individual at the time the health care is provided or, if the health care is provided on the work site of the employer, by posting a notice in a prominent place at the location where the health care is provided.

6.2 To the extent that DMH is a Public Health Authority under HIPAA, DMH is permitted to use PHI in all cases in which it is permitted to disclose such information for public health activities under this section 6

Disclosure About (Adult) Victims of Abuse, Neglect or Domestic Violence

7.1 Except for reports of child abuse or neglect permitted under Section 6, DMH may disclose PHI about an individual whom DMH reasonably believes to be a victim of abuse, neglect or domestic violence to a government authority, including a social services or protective services agency, authorized by law to receive reports of such abuse, neglect or domestic violence:

7.1.1 To the extent the disclosure is required by law and the disclosure complies with and is limited to the relevant requirements of such law;

7.1.2 If the individual agrees to the disclosure; or

7.1.3 To the extent the disclosure is expressly authorized by statute or regulation; and

7.1.3.1 A professional health care provider, in the exercise of professional judgment, believes the disclosure is necessary to prevent serious harm to the individual or other potential victims; or

7.1.3.2 If the individual is unable to agree because of incapacity, a law enforcement or other public official authorized to receive the report represents that the PHI for which disclosure is sought is not intended to be used against the individual or that an immediate enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure.



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- 7.2 DMH shall promptly inform the individual that such a report has been or will be made, except if:
- 7.2.1 A professional health care provider who is involved in the individual's care, in the exercise of professional judgment, believes informing the individual would place the individual at risk of serious harm; or
 - 7.2.2 DMH would be informing a personal representative, and a professional health care provided involved with the individual's care reasonably believes the personal representative is responsible for the abuse, neglect or other injury, and that informing such person would not be in the best interests of the individual as determined by the professional health care provider, in the exercise of professional judgment.
- 7.3 DMH workforce members who may detect or otherwise observe instances of abuse, neglect, or domestic violence when acting in their professional capacity or within the scope of their employment shall comply with state law reporting requirement.

Use and Disclosure for Health Oversight Activities

- 8.1 DMH may disclose PHI to a health oversight agency for oversight activities authorized by law, including adults; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:
- 8.1.1 The health care system;
 - 8.1.2 Government benefit programs for which health information is relevant to beneficiary eligibility;
 - 8.1.3 Entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards; or
 - 8.1.4 Entities subject to civil rights laws for which health information is necessary for determining compliance.
- 8.2 A health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and such investigation or other activity does not arise out of and is not directly related to:
- 8.2.1 The receipt of health care;
 - 8.2.2 A claim for public benefits related to health; or



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8.2.3 Qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services.

8.3 If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation is considered a health oversight activity for the purposes of this Section 8.

Disclosure for Judicial and Administrative Proceedings

9.1 DMH may disclose PHI in the course of any judicial or administrative proceedings:

9.1.1 In response to an order of a court or administrative tribunal, provided that DMH Discloses only the PHI expressly authorized by such order; or

9.1.2 In response to subpoena, discovery request or other lawful proves, that is not accompanied by an order of a court or administrative tribunal, if:

9.1.2.1 DMH receives satisfactory assurance, as described in Section 9.2.1, from the party seeking the information that reasonable efforts have been made by such party to ensure that the individual who is the subject of the PHI that has been requested has been given notice of the request; or

9.1.2.2 DMH receives satisfactory assurance, as described in Section 9.2.2, from the party seeking the information that reasonable effort have been made by such party to secure a qualified protective order that meets the requirements of Section 9.2.5.

9.2 For the purposes of Section 9.1.2.1, DMH receives satisfactory assurances from a party seeking PHI if DMH receives from such party a written statement and accompanying documentation demonstrating that:

9.2.1 The party requesting such information has made a good faith attempt to provide written notice to the individual (or, if the individual's location is unknown, to mail a notice to the individual's last known address);

9.2.2 The notice included sufficient information about the litigation or proceedings in which the PHI is requested to permit the individual to raise an objection to the court or administrative tribunal; and

9.2.3 The time for the individual to raise objections to the court or administrative tribunal has elapsed, and



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9.2.3.1 No objections were filed; or

9.2.3.2 All objections filed by the individual have been resolved by the court of the administrative tribunal and the Disclosures being sought are consistent with such resolution.

9.2.4 For the purposes of Section 9.1.2.2, DMH receives satisfactory assurances from a party seeking PHI, if DMH receives from such party a written statement and accompanying documentation demonstrating that:

9.2.4.1 The parties to the dispute giving rise to the request for information have agreed to a qualified protective order and have presented it to the court of administrative tribunal with jurisdiction over the dispute; or

9.2.4.2 The party seeking PHI has requested a qualified protective order from such court or administrative tribunal.

9.2.5 A qualified protective order means, with respect to PHI requested under Section 9.2.4, an order of a court or of an administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that:

9.2.5.1 Prohibits the parties from using or disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested; and

9.2.5.2 Requires the return to DMH or destruction of the PHI (including all copies made) at the end of the litigation or proceeding.

9.2.6 DMH may disclose PHI in response to lawful process described in Section 9.1.2, without receiving satisfactory assurance under Sections 9.1.2.1 or 9.1.2.2, if DMH makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of Section 9.2.1 or to seek a qualified protective order sufficient to meet the requirements of Section 9.2.4.

9.3 This Section 9 does not supersede other Sections that otherwise permit or restrict Uses of disclosures of PHI.

Disclosure for Law Enforcement Purposes

10.1 DMH may disclose PHI for a law enforcement purpose to a Law Enforcement Official if the conditions of Sections 10.1 through 10.6 are met, as applicable.



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10.2 Pursuant to process and as otherwise required by law, DMH may disclose PHI:

10.2.1 As required by law, including laws that require the reporting of certain types of wounds or other physical injuries, except for laws subject to Sections 6.1.2 (child abuse reporting) or 7.1 (adult abuse, neglect or domestic violence reporting); or

10.2.2 In compliance with and as limited by the relevant requirements of:

- 10.2.2.1 A court order or court-ordered warrant, or a subpoena or summons issued by a judicial officer;
- 10.2.2.2 A grand jury subpoena; or
- 10.2.2.3 An administrative request, including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law, provided that: (1) the information sought is relevant and material to a legitimate law enforcement inquiry; (2) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) de-identified information could not reasonably be used.

10.3 **Limited information for identification and location purposes.** Except for disclosures required by law as permitted by Section 5, DMH may disclose PHI in response to a law enforcement official's request for such information for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person, provided that:

10.3.1 DMH may disclose only the following information:

- 10.3.1.1 Name and address;
- 10.3.1.2 Date and place of birth;
- 10.3.1.3 Social security number
- 10.3.1.4 ABO blood type and Rh factor;
- 10.3.1.5 Type of injury;
- 10.3.1.6 Date and time of treatment;
- 10.3.1.7 Date and time of death, if applicable; and



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10.3.1.8 A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache) scars, and tattoos.

10.3.2 Except as permitted by Section 6.a, DMH shall not disclose for the purposes of identification or location any PHI related to the individual's DMH or DMH analysis, dental records, or typing, samples or analysis of body fluids or tissues.

10.4 **Victims of a crime.** Except for disclosures required by law as permitted by Section 10.1.1, DMH may disclose PHI in response to a law enforcement official's request for such information about an individual who is or is suspected to be a victim of a crime, other than disclosures that are subject to Sections 6 or 7, if:

10.4.1 The individual agrees to the disclosure; or

10.4.2 DMH is unable to obtain the individual's agreement because of incapacity or other emergency circumstances, provided that:

10.4.2.1 The law enforcement official represents that such information is needed to determine whether a violation of law by a person other than the victim has occurred, and such information is not intended to be used against the victim.

10.4.2.2 The law enforcement official represents that immediate law enforcement activity that depends upon the disclosure would be materially and adversely affected by waiting until the individual is able to agree to the disclosure; and

10.4.2.3 The disclosure is in the best interests of the individual as determined by a professional health care provider involved in the individual's care, in the exercise of professional judgment.

10.5 **Decedents.** DMH may disclose PHI about an individual who has died to a law enforcement official for the purpose of alerting law enforcement of the death of the individual if DMH has a suspicion that such death may have resulted from criminal conduct.

10.6 **Crime on premises.** DMH may disclose to a law enforcement official PHI that DMH believes in good faith constitutes evidence of criminal conduct that occurred on the premises of DMH.



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10.7 Reporting crime in emergencies:

10.7.1 If DMH is providing emergency health care in response to a medical emergency, other than an emergency on its own premises, DMH may disclose PHI to a law enforcement official if such disclosure appears necessary to alert law enforcement to:

- 10.7.1.1 The commission and nature of a crime;
- 10.7.1.2 The location of such crime or of the victim(s) of such crime; and
- 10.7.1.3 The identity, description and location of the perpetrator of such crime.

10.7.2 If DMH believes that the medical emergency described in this Section 10.6 is the result of abuse, neglect or domestic violence of the individual in need of emergency health care, this subsection does not apply and any disclosure to a law enforcement official for law enforcement purposes is subject to Section 7.

Use and Disclosure About Decedents

- 11.1 DMH may disclose PHI to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. If DMH performs the duties of a coroner or medical examiner, it may use the PHI for the purposes described in this Section 11.
- 11.2 DMH may disclose PHI to funeral directors, consistent with applicable law, as necessary to carry out its duties with respect to the decedent. If necessary for funeral directors to carry out their duties, DMH may disclose the PHI prior to, and in reasonable anticipation of, the individual's death.

Use and Disclosure for Cadaveric Organ, Eye, or Tissue Donation Purposes

- 12.1 DMH may use or disclose PHI to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation.

Use and Disclosure for Research Purposes

- 13.1 Uses and disclosures for research purposes shall be in accordance with the policy and procedure on Uses and Disclosures of Protected Health Information for Research Purposes.



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Uses and Disclosures to Avert a Serious Threat to Health or Safety

- 14.1 DMH may, consistent with applicable law and standards of ethical conduct, use or disclose PHI, if DMH, in good faith, believes the use or disclosure:
- 14.1.1 Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonable able to prevent or lessen the threat, including the target of the threat; or
 - 14.1.2 Is necessary for law enforcement authorities to identify or apprehend an individual because of a statement by an individual admitting participation in a violent crime that DMH reasonably believes may have caused serious physical harm to the victim; or where it appears from all the circumstances that the individual has escaped from a correctional institution or from lawful custody.
- 14.2 The use or disclosure pursuant to this Section may not be made if the PHI is learned by DMH:
- 14.2.1 In the course of treatment to affect the propensity to commit the criminal conduct that is the basis for the disclosure under Section 14.1.2, or counseling or therapy; or
 - 14.2.2 Through a request by the individual to initiate or to be referred for the treatment, counseling, or therapy described in Section 14.2.1.
- 14.3 A disclosure made pursuant to Section 14.1.2 shall contain only the statement described in 14.2.3 and the PHI described in Section 10.2.
- 14.4 DMH is presumed to have made the disclosure in good faith if DMH's belief is based upon its actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

Uses and Disclosures for Specialized Government Functions

- 15.1 DMH may use and disclose the PHI of individuals who are Armed Forces personnel for activities deemed necessary by appropriate military command authorities to assure the proper execution of the military mission, if the appropriate military authority has published, by notice in the Federal Register, the following information:
- 15.1.1 Appropriate military command authorities; and
 - 15.1.2 DMH may use and disclose PHI of individuals who are foreign military personnel to their appropriate foreign military authority for the same purposes for which uses and



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disclosures are permitted for Armed Forces personnel under the notice published in the Federal Register pursuant to 15.1.

- 15.3 DMH may disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Ace (50 U.S.C. 401, et seq.) and implementing authority (e.g., Executive Order 12333).
- 15.4 DMH may disclose PHI to authorized federal officials for the provision of protective services to the President or other persons authorized under law, or to foreign heads of state or other persons authorized for the conduct of investigations authorized by 18 §§ U.S.C. 871 and 879.
- 15.5 DMH may disclose to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual PHI about such inmate or individual, if the correctional institution or such law enforcement official represents that such PHI is necessary for the following purposes:
- 15.5.1 The provision of health care to such individuals;
 - 15.5.2 The health and safety of such individual or other inmates;
 - 15.5.3 The health and safety of the officers or employees of or others at the correctional institution.
 - 15.5.4 The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility or setting to another.
 - 15.5.5 Law enforcement on the premises of the correctional institution; and
 - 15.5.6 The administration and maintenance of the safety, security, and good order of the correctional institution.
- 15.6 To the extent that DMH is a correctional Institution under HIPAA, it may use PHI of individuals who are inmates for any purpose for which PHI may be disclosed.

Disclosure for Workers' Compensation

- 16.1 DMH may disclose PHI as authorized by and to the extent necessary to comply with the laws relating to workers' compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.



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Verification of Identity and Authority

- 17.1 DMH shall establish the identity and authority of the requestor in accordance with the Verification of Identity and Authority Policy and Procedure.

AUTHORITY

Code of Federal Regulations 45 Part 160 and 164; Section 164.512 – “Uses & Disclosures for Which Consent Authorization or Opportunity to Agree or Object is Not Required”